

AMENDED IN SENATE APRIL 27, 2004

AMENDED IN SENATE MARCH 31, 2004

**SENATE BILL**

**No. 1429**

**Introduced by Senator Denham**

February 19, 2004

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An act to amend Sections 13380 and 23612 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1429, as amended, Denham. Traffic collision: fatality: testing.

Under existing law, a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for any driving under the influence offense allegedly committed in violation of the statutes.

This bill would extend the implied consent testing requirement to a person who, while driving, is ~~involved~~ *at fault* in *causing* a traffic collision that is the proximate cause of a fatality. The bill would also require a peace officer, if a person is so involved in a collision and refuses to take the test, to serve a notice of an order suspending or revoking the person's privilege to operate a motor vehicle.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 13380 of the Vehicle Code is amended  
2 to read:

1 13380. (a) If a peace officer serves a notice of an order of  
2 suspension pursuant to Section 13388 or paragraph (2) of  
3 subdivision (e) of Section 23612, or arrests any person for a  
4 violation of Section 23140, 23152, or 23153, the peace officer  
5 shall immediately forward to the department a sworn report of all  
6 information relevant to the enforcement action, including  
7 information that adequately identifies the person, a statement of  
8 the officer's grounds for belief that the person violated Section  
9 23136, 23140, 23152, or 23153, a report of the results of any  
10 chemical tests that were conducted on the person or the  
11 circumstances constituting a refusal to submit to or complete the  
12 chemical testing pursuant to Section 13388 or 23612, a copy of any  
13 notice to appear under which the person was released from  
14 custody, and, if immediately available, a copy of the complaint  
15 filed with the court. For the purposes of this section and  
16 subdivision (g) of Section 23612, "immediately" means on or  
17 before the end of the fifth ordinary business day following the  
18 arrest, except that with respect to Section 13388 only,  
19 "immediately" has the same meaning as that term is defined in  
20 paragraph (3) of subdivision (b) of Section 13388.

21 (b) The peace officer's sworn report shall be made on forms  
22 furnished or approved by the department.

23 (c) For the purposes of this section, a report prepared pursuant  
24 to subdivision (a) and received pursuant to subdivision (a) of  
25 Section 1801, is a sworn report when it bears an entry identifying  
26 the maker of the document or a signature that has been affixed by  
27 means of an electronic device approved by the department.

28 SEC. 2. Section 23612 of the Vehicle Code is amended to  
29 read:

30 23612. (a) (1) (A) Any person who drives a motor vehicle  
31 is deemed to have given his or her consent to chemical testing of  
32 his or her blood or breath for the purpose of determining the  
33 alcoholic content of his or her blood, if lawfully arrested for any  
34 offense allegedly committed in violation of Section 23140, 23152,  
35 or 23153, or if, while driving, is ~~involved in~~ *at fault in causing* a  
36 traffic collision that is the proximate cause of a fatality. If a blood  
37 or breath test, or both, are unavailable, then paragraph (2) of  
38 subdivision (d) applies.

39 (B) Any person who drives a motor vehicle is deemed to have  
40 given his or her consent to chemical testing of his or her blood or



urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23140, 23152, or 23153, or if, while driving, is involved in a traffic collision that is the proximate cause of a fatality.

(C) (i) Except as provided in clause (ii), testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153.

(ii) Each driver who is ~~involved in~~ *at fault in causing* a traffic collision that is the proximate cause of a fatality shall submit to testing under this section upon the direction of a peace officer.

(D) The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if the person is convicted of a violation of Section 23152 or 23153, and (i) the suspension of the person's privilege to operate a motor vehicle for a period of one year, (ii) the revocation of the person's privilege to operate a motor vehicle for a period of two years if the refusal occurs within seven years of a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code that resulted in a conviction, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 for an offense that occurred on a separate occasion, or (iii) the revocation of the person's privilege to operate a motor vehicle for a period of three years if the refusal occurs within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, that resulted in convictions, or if the person's privilege to operate a motor vehicle has been suspended or revoked two or more times pursuant to Section 13353, 13353.1, or 13353.2 for offenses that occurred on separate occasions, or if there is any combination of those convictions or administrative suspensions or revocations.

(2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, or if, while driving, is ~~involved~~

1 ~~is~~ *at fault in causing* a traffic collision that is the proximate cause  
2 of a fatality, the person has the choice of whether the test shall be  
3 of his or her blood or breath and the officer shall advise the person  
4 that he or she has that choice. If the person arrested either is  
5 incapable, or states that he or she is incapable, of completing the  
6 chosen test, the person shall submit to the remaining test. If a blood  
7 or breath test, or both, are unavailable, then paragraph (2) of  
8 subdivision (d) applies.

9 (B) If the person is lawfully arrested for driving under the  
10 influence of any drug or the combined influence of an alcoholic  
11 beverage and any drug, the person has the choice of whether the  
12 test shall be of his or her blood, breath, or urine, and the officer  
13 shall advise the person that he or she has that choice.

14 (C) A person who chooses to submit to a breath test may also  
15 be requested to submit to a blood or urine test if the officer has  
16 reasonable cause to believe that the person was driving under the  
17 influence of any drug or the combined influence of an alcoholic  
18 beverage and any drug and if the officer has a clear indication that  
19 a blood or urine test will reveal evidence of the person being under  
20 the influence. The officer shall state in his or her report the facts  
21 upon which that belief and that clear indication are based. The  
22 person has the choice of submitting to and completing a blood or  
23 urine test, and the officer shall advise the person that he or she is  
24 required to submit to an additional test and that he or she may  
25 choose a test of either blood or urine. If the person arrested either  
26 is incapable, or states that he or she is incapable, of completing  
27 either chosen test, the person shall submit to and complete the  
28 other remaining test.

29 (3) If the person is lawfully arrested for an offense allegedly  
30 committed in violation of Section 23140, 23152, or 23153, or if,  
31 while driving, is ~~involved in~~ *at fault in causing* a traffic collision  
32 that is the proximate cause of a fatality, and, because of the need  
33 for medical treatment, the person is first transported to a medical  
34 facility where it is not feasible to administer a particular test of, or  
35 to obtain a particular sample of, the person's blood, breath, or  
36 urine, the person has the choice of those tests that are available at  
37 the facility to which that person has been transported. In that case,  
38 the officer shall advise the person of those tests that are available  
39 at the medical facility and that the person's choice is limited to  
40 those tests that are available.

1 (4) The officer shall also advise the person that he or she does  
2 not have the right to have an attorney present before stating  
3 whether he or she will submit to a test or tests, before deciding  
4 which test or tests to take, or during administration of the test or  
5 tests chosen, and that, in the event of refusal to submit to a test or  
6 tests, the refusal may be used against him or her in a court of law.

7 (5) Any person who is unconscious or otherwise in a condition  
8 rendering him or her incapable of refusal is deemed not to have  
9 withdrawn his or her consent and a test or tests may be  
10 administered whether or not the person is told that his or her failure  
11 to submit to, or the noncompletion of, the test or tests will result  
12 in the suspension or revocation of his or her privilege to operate  
13 a motor vehicle. Any person who is dead is deemed not to have  
14 withdrawn his or her consent and a test or tests may be  
15 administered at the direction of a peace officer.

16 (b) Any person who is afflicted with hemophilia is exempt  
17 from the blood test required by this section.

18 (c) Any person who is afflicted with a heart condition and is  
19 using an anticoagulant under the direction of a licensed physician  
20 and surgeon is exempt from the blood test required by this section.

21 (d) (1) A person lawfully arrested for any offense allegedly  
22 committed while the person was driving a motor vehicle in  
23 violation of Section 23140, 23152, or 23153 may request the  
24 arresting officer to have a chemical test made of the arrested  
25 person's blood or breath for the purpose of determining the  
26 alcoholic content of that person's blood, and, if so requested, the  
27 arresting officer shall have the test performed.

28 (2) If a blood or breath test is not available under subparagraph  
29 (A) of paragraph (1) of subdivision (a), or under subparagraph (A)  
30 of paragraph (2) of subdivision (a), or under paragraph (1) of this  
31 subdivision, the person shall submit to the remaining test in order  
32 to determine the percent, by weight, of alcohol in the person's  
33 blood. If both the blood and breath tests are unavailable, the person  
34 shall be deemed to have given his or her consent to chemical  
35 testing of his or her urine and shall submit to a urine test.

36 (e) (1) If the person who has been arrested for a violation of  
37 Section 23140, 23152, or 23153, refuses or fails to complete a  
38 chemical test or tests, or requests that a blood or urine test be taken,  
39 the peace officer, acting on behalf of the department, shall serve  
40 the notice of the order of suspension or revocation of the person's

1 privilege to operate a motor vehicle personally on the arrested  
2 person. The notice shall be on a form provided by the department.

3 (2) If a driver who is ~~involved in~~ *at fault in causing* a traffic  
4 collision that is the proximate cause of a fatality and refuses or fails  
5 to complete a chemical test or tests, the peace officer, acting on  
6 behalf of the department, shall serve the notice of the order of  
7 suspension or revocation of the person's privilege to operate a  
8 motor vehicle personally on the person. The notice shall be on a  
9 form provided by the department.

10 (f) If the peace officer serves the notice of the order of  
11 suspension or revocation of the person's privilege to operate a  
12 motor vehicle, the peace officer shall take possession of any  
13 driver's license issued by this state that is held by the person. The  
14 temporary driver's license shall be an endorsement on the notice  
15 of the order of suspension and shall be valid for 30 days from the  
16 date of arrest or accident.

17 (g) (1) The peace officer shall immediately forward a copy of  
18 the completed notice of suspension or revocation form and any  
19 driver's license taken into possession under subdivision (f), with  
20 the report required by Section 13380, to the department. If the  
21 person submitted to a blood or urine test, the peace officer shall  
22 forward the results immediately to the appropriate forensic  
23 laboratory. The forensic laboratory shall forward the results of the  
24 chemical tests to the department within 15 calendar days of the  
25 date of the arrest.

26 (2) (A) Notwithstanding any other provision of law, any  
27 document containing data prepared and maintained in the  
28 governmental forensic laboratory computerized database system  
29 that is electronically transmitted or retrieved through public or  
30 private computer networks to or by the department is the best  
31 available evidence of the chemical test results in all administrative  
32 proceedings conducted by the department. In order to be  
33 admissible as evidence in administrative proceedings, a document  
34 described in this subparagraph shall bear a certification by the  
35 employee of the department who retrieved the document  
36 certifying that the information was received or retrieved directly  
37 from the computerized database system of a governmental  
38 forensic laboratory and that the document accurately reflects the  
39 data received or retrieved.

1 (B) Notwithstanding any other provision of law, the failure of  
2 an employee of the department to certify under subparagraph (A)  
3 is not a public offense.

4 (h) A preliminary alcohol screening test that indicates the  
5 presence or concentration of alcohol based on a breath sample in  
6 order to establish reasonable cause to believe the person was  
7 driving a vehicle in violation of Section 23140, 23152, or 23153  
8 is a field sobriety test and may be used by an officer as a further  
9 investigative tool.

10 (i) If the officer decides to use a preliminary alcohol screening  
11 test, the officer shall advise the person that he or she is requesting  
12 that person to take a preliminary alcohol screening test to assist the  
13 officer in determining if that person is under the influence of  
14 alcohol or drugs, or a combination of alcohol and drugs. The  
15 person's obligation to submit to a blood, breath, or urine test, as  
16 required by this section, for the purpose of determining the alcohol  
17 or drug content of that person's blood, is not satisfied by the person  
18 submitting to a preliminary alcohol screening test. The officer  
19 shall advise the person of that fact and of the person's right to  
20 refuse to take the preliminary alcohol screening test.

